

George A. Zelcs (*pro hac vice*)
gzelcs@koreintillery.com
Robert E. Litan (*pro hac vice*)
rlitan@koreintillery.com
Randall P. Ewing, Jr. (*pro hac vice*)
rewing@koreintillery.com
Jonathon D. Byrer (*pro hac vice*)
jbyrer@koreintillery.com
KOREIN TILLERY LLC
205 North Michigan, Suite 1950
Chicago, IL 60601
Telephone: (312) 641-9750
Facsimile: (312) 641-9751

Stephen M. Tillery (*pro hac vice*)
stillery@koreintillery.com
Jamie Boyer (*pro hac vice*)
jboyer@koreintillery.com
Michael E. Klenov, CA Bar #277028
mklenov@koreintillery.com
Carol O'Keefe (*pro hac vice*)
cokeefe@koreintillery.com

KOREIN TILLERY, LLC
505 North 7th Street, Suite 3600
St. Louis, MO 63101
Telephone: (314) 241-4844
Facsimile: (314) 241-3525

Karma M. Giulianelli, CA Bar #184175
karma.giulianelli@bartlitbeck.com
Glen E. Summers, CA Bar # 176402
glen.summers@bartlitbeck.com
Chris Lind (*pro hac vice*)
chris.lind@bartlitbeck.com
Jameson R. Jones (*pro hac vice*)
jameson.jones@bartlitbeck.com

BARTLIT BECK LLP
1801 Wewetta St. Suite 1200,
Denver, Colorado 80202
Telephone: (303) 592-3100
Facsimile: (303) 592-3140
*Attorneys for Plaintiffs and the Proposed
Class in Carr v. Google, LLC, et al.*

Peggy J. Wedgworth (*pro hac vice*)
pwedgworth@milberg.com

Robert A. Wallner (*pro hac vice*)
rwallner@milberg.com

Elizabeth McKenna (*pro hac vice*)
emckenna@milberg.com

Blake Yagman (*pro hac vice*)
byagman@milberg.com

Michael Acciavatti (*pro hac vice*)
macciavatti@milberg.com

MILBERG PHILLIPS GROSSMAN LLP
100 Garden City Plaza, Suite 500
Garden City, New York 11530
Telephone: 212-594-5300
Facsimile: 212-868-1229
*Counsel for Plaintiffs and the Proposed Class
in Bentley v. Google LLC, et al.*

Elizabeth C. Pritzker, CA Bar#146267
ecp@pritzkerlevine.com

Bethany Caracuzzo, CA Bar#190687
bc@pritzkerlevine.com

Caroline Corbitt, CA Bar #305492
ccc@pritzkerlevine.com

PRITZKER LEVINE, LLP
1900 Powell Street, Suite 450
Emeryville, CA 94608
Telephone: (415) 805-8532
Facsimile: (415) 366-6110
*Counsel for Plaintiffs and the Proposed Class
in Carroll v. Google, LLC, et al.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

*In re Google Play Consumer Antitrust
Litigation*

CASE NO. 3:20-CV-05761 JD

Related Actions:

Epic Games, Inc. v. Google, LLC; 3:20-CV-05671-JD

*In re Google Play Developer Antitrust
Litigation*, 3:20-CV-5792-JD

**PLAINTIFFS CARR, BENTLEY AND
CARROLL’S MOTION TO STRIKE OR
ALTERNATIVE MOTION FOR LEAVE
TO RESPOND TO COTCHETT, PITRE
& MCCARTHY AND KAPLAN FOX &
KILSHEIMER LLP’S MEMORANDUM
IN FURTHER SUPPORT**

Hearing

Date: December 15, 2020

Time: 11:00 a.m. (Pacific)¹

Location: Via Zoom

INTRODUCTION

The Korein/Bartlit Group requests that the Court either strike Kaplan/Cotchett’s Memorandum in Further Support (“Supplemental Memorandum”) or grant leave for a response.² The Supplemental Memorandum is an improper end-run around this Court’s briefing rules, presenting new arguments and proposing a new steering committee of at least four firms. The Korein/Bartlit Group should have an opportunity to respond if the Court considers the Supplemental Memorandum.

The Korein/Bartlit Group filed its Motion for Appointment of Interim Lead Counsel (“Group’s Motion for Appointment”) on November 23, 2020. (Dkt. 81). The Court ordered “[r]esponses due by 12/7/2020.” (Dkt. 81 Elec. Notice). December 7, 2020 came and went with no opposition from Kaplan/Cotchett. The Korein/Bartlit Group’s response to Kaplan/Cotchett’s own motion for appointment was due on December 9, 2020 and timely filed. (Dkt. 87 & 115). Having missed the deadline to oppose the Group’s Motion for Appointment, Kaplan/Cotchett filed a 16 page

¹ The Supplemental Memorandum incorrectly states this hearing is set for 10 a.m. Pacific time. The Court set this matter for hearing at 11 a.m. Pacific. (Dkt. 104).

² “Korein/Bartlit Group” collectively refers to the firms of Korein Tillery LLC, Bartlit Beck, LLP, Milberg Phillips Grossman LLP and Pritzker Levine, LLP. “Kaplan/Cotchett” collectively refers to the firms of Kaplan Fox & Kilsheimer and Cotchett, Pitre & McCarthy.

1 “Memorandum in Further Support,” with over 100 pages of exhibits, approximately one hour after
2 the Korein/Bartlit Group timely opposed the Kaplan/Cotchett motion for appointment. (Dkt. 116).

3 Substantively, the Supplemental Brief offers three arguments, (1) that the Kaplan/Cotchett
4 and Korein/Bartlit Group complaints are distinguishable (*id.* at p. 2-3); (2) that the Korein/Bartlit
5 Group’s early case activity is irrelevant (*id.* at p. 3-5); and (3) that a pre-appointed steering committee
6 comprised of at least four firms supported by no fewer than 12 lawyers promotes efficiency³ (*id.* at
7 5-11). The Court should either strike Kaplan/Cotchett’s Supplemental Memorandum or grant the
8 Korein/Bartlit Group leave to respond. A copy of the Group’s proposed three page Response is
9 attached as Exhibit 1.⁴

10 ARGUMENT

11 Local Rule 7 and this Court’s Standing Order for Civil Cases (“Standing Order”) limit litigants
12 to a 15 page opening brief, a 15 page response, and a 10 page reply. L.R. 7-2 & 7-3; Standing Order
13 at ¶18. The Standing Order commands: “Reply papers should not raise new points that could have
14 been addressed in the opening motion or brief.” Standing Order at ¶15. Further briefing is generally
15 not permitted without leave of court. L.R. 7-3(d); Standing Order ¶15.

16 Regardless of how Kaplan/Cotchett characterize their Supplemental Memorandum, it is
17 procedurally improper. If the Supplemental Memorandum is a reply to the Korein/Bartlit Group’s
18 Opposition, it violates Paragraph 15 of the Standing Order by asserting arguments known to
19 Kaplan/Cotchett when they originally filed for leadership, and thus “could have been addressed in the
20 opening motion or brief.” Standing Order at ¶15.⁵ If the Supplemental Memorandum is merely
21 additional briefing, then it violates Local Rule 7-2(d) and Paragraph 15 of the Court’s Standing Order,
22 which prohibit such briefing without leave. Kaplan/Cotchett cannot unilaterally ignore the Court’s
23 briefing rules simply because they missed (through negligence or choice) the December 7, 2020

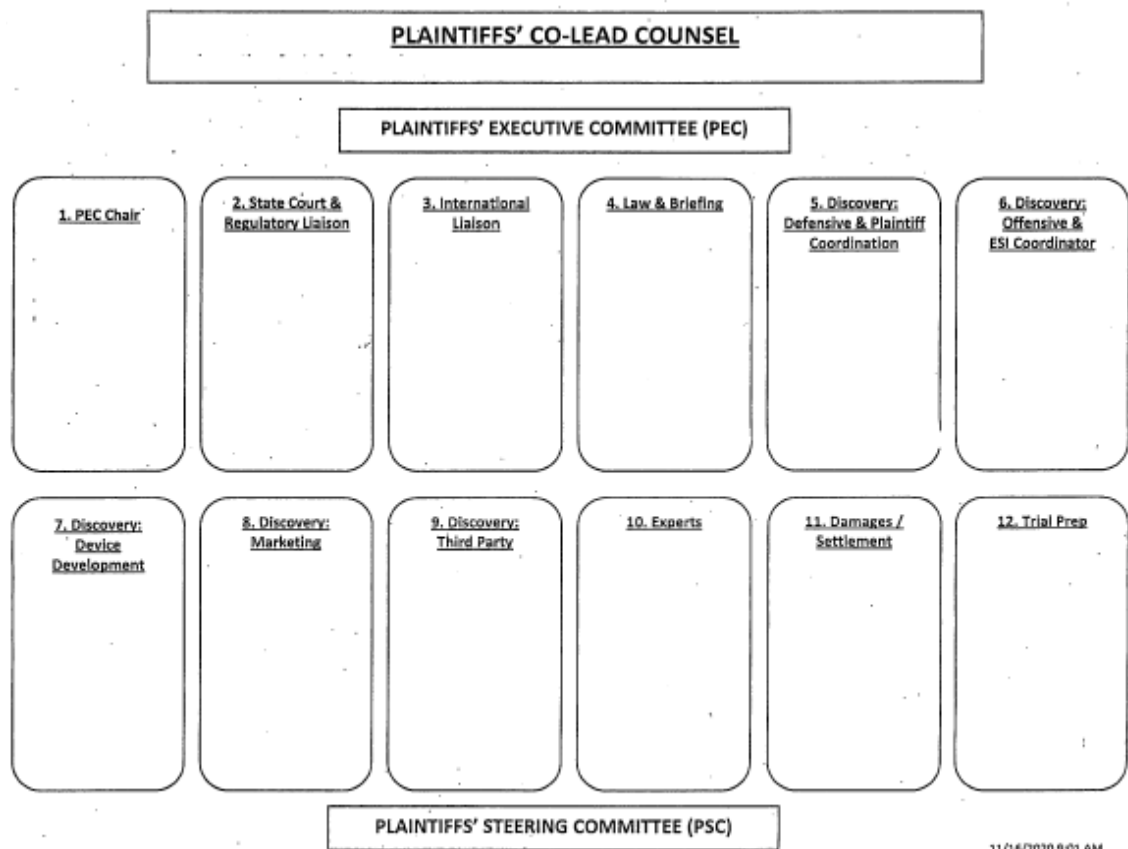
24 ³ Notably, this proposed steering committee is already growing, with the law firm of Bottini &
25 Bottini seeking appointment to its ranks just yesterday. (Dkt. 119).

26 ⁴ The Response is seven pages total, but only three of those are substantive argument.

27 ⁵ Kaplan/Cotchett does not identify when the makeup of the steering committee was finalized, but
28 arguments concerning the pleadings and the Korein/Bartlit Group’s early case activities were
known well before Kaplan/Cotchett filed their opening brief. In any event, Korein/Bartlit should be
permitted to respond to the new arguments and information.

opposition deadline. Lastly, the Supplemental Memorandum violates the 15 page opening brief limit by adding another 11 pages of briefing to Kaplan/Cotchett's original 15 page argument. *See* Standing Order ¶18. (Dkt. 87 & 116).

The Court could justifiably strike the Kaplan/Cotchett "Memorandum in Further Support" as improper. If, however, the Court intends to consider the filing, a brief response to the new arguments is warranted, particularly with respect to Kaplan/Cotchett's newly proposed steering committee. Notably absent from the Supplemental Memorandum is any discussion of exactly how the committee will function, but Kaplan/Cotchett provided the below diagram during leadership discussions.



Given the myriad of billing firms and redundant committees envisioned by this diagram, the Korein/Bartlit Group requests the opportunity to address how this bloated structure would affect efficient class leadership.

1 The Korein/Bartlit Group has no intention of reiterating arguments made in its Motion for
2 Appointment or Opposition. Rather, it seeks leave to file a targeted, three page reply focused only on
3 the Supplemental Memorandum's new arguments and information. The Group's substantive right to
4 present a complete leadership argument should not fall victim to Kaplan/Cotchett's circumvention of
5 the Court's briefing rules.

6 A Proposed Order is attached to this Motion as Exhibit 2.

7 WHEREFORE the Korein/Bartlit Group respectfully requests the Court strike
8 Kaplan/Cotchett's Memorandum in Further Support or, in the alternative, grant the Korein/Bartlit
9 Group leave to file its Response to Kaplan/Cotchett's Memorandum in Further Support and for any
10 further relief that the Court deems just and appropriate.

11
12 Dated: December 11, 2020
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

By: /s/ Jamie L. Boyer

KOREIN TILLERY LLC

George A. Zelcs (*pro hac vice*)
 Robert E. Litan (*pro hac vice*)
 Randall Ewing, Jr. (*pro hac vice*)
 Jonathon D. Byrer (*pro hac vice*)
 205 North Michigan, Suite 1950
 Chicago, IL 60601
 Telephone: (312) 641-9750
 Facsimile: (312) 641-9751
 gzelcs@koreintillery.com
 rlitan@koreintillery.com
 rewing@koreintillery.com
 jbyrer@koreintillery.com

Stephen M. Tillery (*pro hac vice*)
 Jamie Boyer (*pro hac vice*)
 Michael E. Klenov (277028)
 Carol O'Keefe (*pro hac vice*)
 505 North 7th Street, Suite 3600
 St. Louis, MO 63101
 Telephone: (314) 241-4844
 Facsimile: (314) 241-3525
 stillery@koreintillery.com
 jboyer@koreintillery.com
 mklenov@koreintillery.com
 cokeefe@koreintillery.com

BARTLIT BECK LLP

Karma M. Giulianelli (184175)
 Glen E. Summers (176402)
 Chris Lind (*pro hac vice*)
 Jameson R. Jones (*pro hac vice*)
 1801 Wewetta St., Suite 1200
 Denver, CO 80202
 Telephone: (303) 592-3100
 Facsimile: (303) 592-3140
 karma.giulianelli@bartlitbeck.com
 glen.summers@bartlitbeck.com
Counsel for Plaintiffs in Carr v. Google LLC, et al.

By: /s/ Peggy J. Wedgworth

MILBERG PHILLIPS GROSSMAN LLP

Peggy J. Wedgworth (*pro hac vice*)
 Robert A. Wallner (*pro hac vice*)
 Elizabeth McKenna (*pro hac vice*)
 Blake Yagman (*pro hac vice*)
 Michael Acciavatti (*pro hac vice*)
 100 Garden City Plaza, Suite 500
 Garden City, New York 11530
 Telephone: 212-594-5300
 Facsimile: 212-868-1229
 pwedgworth@milberg.com
 rwallner@milberg.com
 emckenna@milberg.com
 byagman@milberg.com
 macciavatti@milberg.com
Counsel for Plaintiffs in Bentley v. Google LLC, et al.

By: /s/ Elizabeth C. Pritzker

Elizabeth C. Pritzker (146267)
 Bethany Caracuzzo, (190687)
 Caroline Corbitt, (305492)
PRITZKER LEVINE, LLP
 1900 Powell Street, Suite 450
 Emeryville, CA 94608
 Telephone: (415) 805-8532
 Facsimile: (415) 366-6110
 ecp@pritzkerlevine.com
 bc@pritzkerlevine.com
 ccc@pritzkerlevine.com
Counsel for Plaintiffs and the Proposed Class in Carroll v. Google, LLC, et al.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 11, 2020, a true and correct copy of the foregoing document was served upon all counsel of record through the Court's electronic filing and notification system.

/s/ Jamie L. Boyer